

SB 422 Water Speculation: Testimony of Avista Corporation (Jackson)

Mr. Chairman and members of the Committee on Natural Resources. My name is Tom Ebzery and I represent Avista Corporation. Avista serves about 340,000 electric customers and 300,000 natural gas customers in Idaho and eastern Washington. Avista is the sole owner of the Noxon Rapids Dam located north of Thompson Falls near the Idaho border.

We stand in strong opposition to Senate Bill 422 as it is another assault on the prior appropriations doctrine and is restricted to power generation as opposed to all uses of water. The bill goes into an existing statute which discusses the term "speculation" for ground water, inserts "surface water" and basically says that if a power generator objects to a proposed appropriation upstream from the power generation facility the power generator is a "speculator" whatever that means.

Second the author is attempting to create new law as to the meaning of adverse effect which has a significant history already and has been thoroughly discussed in legislation passed by the last legislature and studied extensively in the interim by the Water Policy Interim Committee. Let me assure you the determination of adverse effect to a prior appropriator under this bill does not square with current law or precedent. It appears that the burden is on the objector to show that an adverse effect will occur as a result of the application based on standards and measures accepted by the hydrologic and engineering professions. Just what does that mean? I don't think there are any agreeable standards and measures today and even if rulemaking were attempted to come up with some formula it would not likely have any consensus and be challenged.

The bill also requires a senior water rights objector in any case not just a hydro case to demonstrate how the change in the stream flow or the water table prevents the objector from exercising the objector's water rights under the changed provisions. Every senior water rights holder should be alarmed at this provision and we urge this bill to be tabled.